

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN MORTON and U.S. POSTAL SERVICE,
CHICAGO BULK MAIL CENTER, Forest Park, Ill.

*Docket No. 96-1984; Submitted on the Record;
Issued October 1, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to compensation for the periods February 14 to 15, 1996 and February 20 to 24, 1996; and (2) whether appellant has more than a 19 percent permanent impairment of his right upper extremity for which he received a schedule award.

The Board has duly reviewed the case record and finds that the Office properly determined that appellant has not establish that he was disabled from employment for the periods February 14 to 15, 1996 and February 20 to 24, 1996 due to his accepted employment injury.

In the present case, the Office accepted that appellant sustained a sprain of the right shoulder, a right rotator cuff tear, and right shoulder impingement syndrome as a result of a traumatic injury on June 15, 1991. The Office authorized an acromioplasty which was performed on October 1, 1991 and a right shoulder arthroscopic decompression which was performed on April 10, 1995. Appellant returned to limited-duty employment following his injury but continued to receive compensation from the Office for intermittent periods of wage-loss disability.¹ By decision dated January 5, 1994, the Office granted appellant a schedule award for a 10 percent permanent impairment of the right upper extremity. By decision dated April 30, 1996, the Office granted appellant a schedule award for an additional nine percent permanent impairment of the right upper extremity. By decision dated May 7, 1996, the Office denied appellant's request for compensation for the periods February 14 to 15, 1996 and February 20 to 24, 1996 on the grounds that the evidence did not establish that he was disabled from employment due to his June 15, 1991 employment injury.

Where an employee, who is disabled from the job he or she held when injured on the account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to

¹ By decision dated January 12, 1994, the Office denied appellant's claim for compensation for the periods July 15 to 23, 1992, April 17 to 24 and July 10 to 13, 1993 on the grounds that the medical evidence did not establish disability.

establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In the present case, appellant sustained a sprain of the right shoulder, a right rotator cuff tear, and right shoulder impingement syndrome as a result of a traumatic injury on June 15, 1991, following which he returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of his claimed disability during the periods in question.

Appellant further has not submitted any medical evidence which would establish that he was disabled from employment from February 14 to 15, 1996 and February 20 to 24, 1996 due to his accepted employment injury. In an office visit note dated February 9, 1996, Dr. David Butler, a Board-certified orthopedic surgeon, related that appellant worked in a permanent limited-duty capacity and listed essentially normal findings on examination. Dr. Butler indicated that he refused appellant's request to be periodically excused from work due to pain and stated, "I am not sure if [appellant] has secondary gain here in terms of trying to avoid work or if he has legitimate pain."

In an office visit note dated February 21, 1996, Dr. Butler related appellant's complaints of right shoulder pain. Dr. Butler again refused appellant's request to be released from work.

In a report dated February 26, 1996, Dr. Richard H. Sidell, a Board-certified orthopedic surgeon, discussed appellant's history of injury, treatment received, and current complaints of neck and right shoulder pain. Dr. Sidell found that appellant could continue to work within his usual restrictions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was caused by his employment is sufficient to establish causal relationship.³ Appellant failed to submit rationalized medical evidence establishing that his claimed periods of disability were causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The Board further finds that appellant has no more than a 19 percent permanent impairment of his right upper extremity for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,⁴ and section 10.304 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

In the present case, appellant received a schedule award on January 5, 1994 for a 10 percent permanent impairment of his right upper extremity. On April 30, 1996 appellant received an award for an additional nine percent impairment of his right upper extremity. The issue thus presented is whether appellant has more than a 19 percent permanent impairment of his right upper extremity.

In a report dated September 15, 1995, Dr. Ronald L. Silver, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement. Dr. Silver obtained the following range of motion findings for appellant's right shoulder: 90 degrees forward flexion, 90 degrees lateral abduction; and 40 degrees of internal and external rotation. Dr. Silver also found that appellant had "significant pain."

By letter dated October 31, 1995, the Office informed appellant that it required additional range of motion findings in order to calculate a schedule award and included a questionnaire for appellant's attending physician to complete.

In response to the Office's inquiry, Dr. Silver submitted a November 8, 1995 report in which he stated that appellant had 40 degrees adduction, 10 degrees extension and 90 degrees flexion in his right shoulder.

In a report dated January 24, 1996, an Office medical adviser applied the appropriate tables and pages of the A.M.A., *Guides* in concluding that appellant had a 19 percent permanent impairment of the right upper extremity. The Office medical adviser found that, for appellant's right shoulder, 40 degrees internal rotation constituted a 3 percent impairment,⁷ 40 degrees external rotation constituted a 1 percent impairment,⁸ 90 degrees flexion constituted a 6 percent impairment,⁹ 10 degrees extension constituted a 2 percent impairment,¹⁰ 90 degrees abduction constituted a 4 percent impairment,¹¹ and 40 degrees adduction constituted no impairment.¹² The Office medical adviser added the impairment values as instructed by the A.M.A., *Guides*¹³

⁶ James J. Hjort, 45 ECAB 595 (1994).

⁷ A.M.A., *Guides* 45, figure 44

⁸ *Id.*

⁹ *Id.* at 43, figure 38.

¹⁰ *Id.*

¹¹ *Id.* at 44, figure 41.

¹² *Id.*

¹³ *Id.* at 45.

and found that appellant had a 16 percent impairment due to loss of range of motion of his right shoulder. He further found that the maximum allowable percentage due to pain in the axillary nerve was 5 percent,¹⁴ which he multiplied by 60 percent according the graded pain scheme¹⁵ to reach an impairment value of 3 percent due to pain. The Office medical adviser combined the 16 percent impairment due to loss of range of motion with the 3 percent impairment due to pain using the combined values chart and concluded that appellant had a 19 percent impairment of his right upper extremity.¹⁶

As the Office medical adviser's determination conforms to the A.M.A., *Guides*, it constitutes the weight of the medical evidence and establishes that appellant has no more than a 19 percent impairment of his right upper extremity.

The decisions of the Office of Workers' Compensation Programs dated May 7 and April 30, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 1, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ *Id.* at 54, Table 15.

¹⁵ *Id.* at 48, Table 11.

¹⁶ *Id.* at 24, 322.